## REMARKS

Claims 1 - 19 are pending in the present application.

The examiner has withdrawn claims 8-19 from consideration

## RESTRICTION REQUIREMENT

I. Election With Traverse

Applicants affirm the provisional election of Group I and their traversal of the restriction requirement.

II. Basis For Traverse

According to MPEP § 803, a restriction requirement between patentably distinct inventions is only proper when

1.) The inventions are independent or distinct; and

2.) There is a serious burden on the Examiner if restriction is not required.

A rebuttable prima facia showing of a serious burden can be made if the Examiner shows by appropriate explanation either separate classification, status in the art, or a different field of search as defined in MPEP § 808.02.

Applicants respectfully contend that there is no undue burden as an art search for any of Groups I-III would be expected to yield the art that is pertinent to the patentability of each of Groups I-III. As a result of the foregoing, Applicants respectfully request that the present restriction requirement be withdrawn.

## REJECTION UNDER 35 USC 103(a)

Claims 1 - 7 stand rejected under 35 USC 103(a) in view of WO 97/11151.

In order to support a *prima facie* case of obviousness the following three criteria must be met:

- First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
- Second, there must be a reasonable expectation of success.

- Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Here, the June 17, 2005, Office Action states that fabric delivery indices that are recited in the claims are not disclosed in the art. Instead, the office action contends that such indices would be obtained, as the same materials and steps that Applicants use are used in the cited art. Applicants traverse such contention as even though the same general materials and general steps may be used an invention may still be found patentable if a parameter that is not a recognized result effective variable is optimized. See MPEP 2144.05 and MPEP 2141.02. Furthermore, according to Section 2141.02 of the MPEP, "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified." In the present case, Applicants discovered that the source of the perfume release problem was the release kinetics, and recognized that the solution was to optimize a parameter, the fabric delivery indices – the art does not recognize such parameter as a result effective variable. Thus, the art cannot teach, suggest or motivate one of ordinary skill in the art to arrive at the claimed invention.

## DOUBLE PATENTING REJECTIONS

Claims 1, 2 and 4-7 stand rejected under the judicially created doctrine of obviousness double patenting as being unpatentable over Claims 1-8 of USP 6,790,814 in view of WO 97/11151.

According to MPEP § 804 (II)(B)(1) an obviousness-type double patenting rejection is appropriate only when the claimed subject matter is not patentable distinct from the subject matter claimed in a commonly owned patent or patent application. Furthermore, the analysis employed in making an obviousness-type double patenting rejection parallels that used to make a 35 U.S.C. § 103 obviousness determination, except that the claims of references applied need not actually be prior art. In the present case, the June 17, 2005, office action states that fabric delivery indices that are recited in the claims are not disclosed in the art. Instead, the office action contends that such indices would be obtained, as the same materials and steps that Applicants use are used in the cited art. Applicants traverse such contention as even though the same general materials and general steps may be used an invention may still be found patentable if a parameter that is not a recognized result effective variable is optimized. See MPEP 2144.05 and MPEP 2141.02. Furthermore, according to Section 2141.02 of the MPEP, "[A] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified." In the present case, Applicants discovered that the source of the perfume release problem was the release kinetics, and recognized that the solution was to optimize a parameter, the fabric delivery indices – the art does not recognize such parameter as a

result effective variable. Thus, the art cannot teach, suggest or motivate one of ordinary skill in the art to arrive at the claimed invention. Therefore, the aforementioned obvious type double patenting rejection is not support by art.

## CONCLUSION

Applicants contend that the 35 have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-19.

Respectfully submitted,

Meli et al.

By_____

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